U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18009906

Date: MAY 5, 2022

Appeal of Dallas Field Office Decision

Form I-212, Application for Permission to Reapply for Admission

The Applicant seeks permission to reapply for admission to the United States under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(iii), because she is inadmissible for having been previously ordered removed.

The Director of the Dallas Field Office in Irving, Texas denied the Form I-212, Application for Permission to Reapply for Admission, as a matter of discretion, concluding that the Applicant, who is currently abroad, did not establish she is an applicant for a pending immigrant visa application who has been interviewed by a consular officer of the U.S. Department of State (DOS) and found inadmissible to the United States under a specific section of the Act which requires the filing of Form I-212. The Director, therefore, did not review the application on its merits.

On appeal, the Applicant contends that the Director erred in concluding that she is not eligible to file her application since neither the regulations nor the instructions to the Form I-212 require a finding of inadmissibility by a consular officer prior to filing the Form I-212. The Applicant asserts that she intends to apply for an immigrant visa before DOS and requests approval of her Form I-212. The Applicant does not contest inadmissibility; the only issue on appeal is whether an adjudication of this application on its merits is warranted. The Applicant states that she has established by a preponderance of the evidence that she is a prospective immigrant visa applicant and as such she should be granted permission to reapply for admission, and that the application should be adjudicated on its merits.

According to the instructions for Form I-212, the Applicant may seek permission to reapply for admission at this time.[1] Approval of an application for permission to reapply is discretionary, and any unfavorable factors will be weighed against the favorable factors to determine if approval of the application is warranted as a matter of discretion. *Matter of Lee*, 17 I&N Dec. 275, 278-79 (Reg'l Comm'r 1978). Factors to be considered in determining whether to grant permission to reapply include the basis for the prior deportation; the recency of deportation; length of residence in the United States; the applicant's moral character; the applicant's respect for law and order; evidence of the applicant's reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to the applicant or others; and the need for the applicant's services

[1] *See* Instructions for Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal – Where to File, https://www.uscis.gov/i-212.

in the United States. *Matter of Tin*, 14 I&N Dec. 371, 373-74 (Reg'l Comm'r 1973). The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

As the Applicant is not inadmissible under section 212(a)(9)(C)(i)(II) of the Act, we find it appropriate to remand the matter to the Director for a full adjudication in order to determine whether the Applicant warrants a favorable exercise of discretion.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.